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SMALL ENTITY COMPLIANCE GUIDE

911 Fee Diversion

New and Emerging Technologies 911 Improvement Act of 2008

FCC 21-80

PS Docket No. 20-291

PS Docket No 09-14

Released: June 25, 2021

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties, or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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Videophone: 1-844-4-FCC-ASL (1-844-432-2275)

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I. OBJECTIVES OF THE PROCEEDING

In the *Report and Order* in PS Docket Nos. 20-291 and 09-14, the Commission adopted rules to implement new federal legislation intended to help address the diversion of 911 fees and charges by states and other jurisdictions for purposes unrelated to 911. The new legislation, section 902 of the Consolidated Appropriations Act, 2021, Division FF, Title IX (section 902),¹ directs the Commission to issue final rules not later than 180 days after the date of enactment of section 902 (i.e., by June 25, 2021) designating the uses of 911 fees or charges by states and taxing jurisdictions that constitute 911 fee diversion for purposes of section 902 and the Commission's rules.

Consistent with this statutory directive, the *Report and Order* adopted rules that define which expenditures of 911 fees or charges by states and jurisdictions constitute fee diversion for purposes of section 902 and the Commission's rules. These rules apply to states or taxing jurisdictions that collect 911 fees or charges from commercial mobile services, IP-enabled voice services, and other emergency communications services.

Under the new rules, acceptable expenditures of 911 fees or charges for the purposes of section 902 are limited to (1) support and implementation of 911 services provided by or in the state or taxing jurisdiction imposing the fee or charge, and (2) operational expenses of public safety answering points (PSAPs) within that state or taxing jurisdiction. The Commission provided illustrative, non-exhaustive examples of acceptable and unacceptable uses of 911 fees or charges at the state and local level. The Commission also adopted an elective safe harbor for states and taxing jurisdictions that designate multi-purpose fees or charges for "public safety," "emergency services," or other similar purposes where a portion of those fees or charges supports 911 services. Additionally, the Commission adopted a process by which a state or taxing jurisdiction may petition for a determination that an obligation or expenditure of a 911 fee or charge should be treated as acceptable even if it has not been designated acceptable in the Commission's rules.

The Commission also adopted a rule prohibiting any state or taxing jurisdiction identified as engaging in diversion of 911 fees or charges in the agency's annual report to Congress on 911 fees from participating or sending a representative to serve on any advisory committee established by the Commission. In addition, the Commission adopted a rule requiring any state or taxing jurisdiction that receives a grant under section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. § 942) after December 27, 2020 to provide the information requested by the Commission to prepare the annual report to Congress.

The decisions made in the *Report and Order* will help to address the longstanding issue of some states and local jurisdictions using 911 fees or charges collected from consumers for purposes unrelated to 911. These decisions will further the goals of the Commission by promoting transparency, accountability, and integrity in the collection and expenditure of fees collected for 911 services, while providing stakeholders with reasonable guidance as part of implementing section 902.

II. COMPLIANCE REQUIREMENTS

The *Report and Order* adopts new rules, which may be found at 47 CFR §§ 9.21-9.26, to implement the provisions of section 902 that require Commission action. These rules clarify what does and does not constitute diversion of 911 fees or charges for purposes of section 902 and the Commission's rules, establish a declaratory ruling process for providing further guidance to states and taxing jurisdictions on

¹ Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Division FF, Title IX, Section 902, Don't Break up the T-Band Act of 2020 (section 902). Section 902 amends 47 U.S.C. § 615a-1.

fee diversion issues, and codify specific restrictions on states and taxing jurisdictions that engage in diversion under these rules.

A. Entities Covered by These Rules (47 CFR §§ 9.21-9.22)

These rules apply to any state or taxing jurisdiction that collects 911 fees or charges from commercial mobile services, IP-enabled voice services, and other emergency communications services. (47 CFR § 9.21.)

- A “state or taxing jurisdiction” includes any of the several states, the District of Columbia, any territory or possession of the United States, a political subdivision of a state, an Indian Tribe, or a village or regional corporation serving a region established under the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 *et seq.*) (47 CFR § 9.22.)
- A “911 fee or charge” is a fee or charge applicable to commercial mobile services, IP-enabled voice services, or other emergency communications services specifically designated by a state or taxing jurisdiction for the support or implementation of 911 services. (47 CFR § 9.22.)
 - A 911 fee or charge includes a fee or charge that is designated for the support of public safety, emergency services, or a similar purpose if that purpose includes the support or implementation of 911 services.
- “Other emergency communications services” means the provision of emergency information to a PSAP via wire or radio communications and may include 911 and E911 service. (47 CFR § 9.22.)

B. Acceptable Uses of 911 Fees (47 CFR § 9.23(a)-(b))

A state or taxing jurisdiction that uses 911 fees or charges for purposes or functions other than those designated as acceptable by the Commission is engaged in diversion.

- Diversion means the obligation or expenditure of a 911 fee or charge for a purpose or function other than the purposes and functions designated by the Commission as acceptable in 47 CFR § 9.23. (47 CFR § 9.22.)
- Diversion also includes distribution of 911 fees to a political subdivision that obligates or expends such fees for a purpose or function other than those designated as acceptable. (47 CFR § 9.22.)

“Acceptable” where used in sections 9.21-9.26 of the Commission’s rules means for purposes of the Consolidated Appropriations Act, 2021, Division FF, Title IX, section 902(c)(1)(C). (47 CFR § 9.22.)

- Acceptable purposes and functions for the obligation or expenditure of 911 fees or charges are limited to (1) the support and implementation of 911 services provided by or in the state or taxing jurisdiction imposing the fee or charge; and (2) operational expenses of PSAPs within the state or taxing jurisdiction imposing the fee or charge. (47 CFR § 9.23(a)(1)-(2).)

The rules also provide a non-exhaustive list of examples of acceptable purposes and functions for the obligation or expenditure of 911 fees or charges. (47 CFR § 9.23(b)(1)-(5).) Such purposes and functions are acceptable provided that the state or taxing jurisdiction can adequately document that it has obligated or spent the fees or charges in question for these purposes and functions. Examples of acceptable purposes and functions for compliance include, but are not limited to:

- **PSAP operating costs.** PSAP operating costs include:
 - The lease, purchase, maintenance, replacement, and upgrade of customer premises equipment (CPE) hardware and software,

- The lease, purchase, maintenance, replacement, and upgrade of computer-aided dispatch (CAD) equipment hardware and software,
 - The lease, purchase, maintenance, replacement, and upgrade of PSAP buildings and facilities,
 - NG911,
 - Cybersecurity,
 - Pre-arrival instructions,
 - Emergency notification systems (ENS), and
 - Technological innovation that supports 911. (47 CFR § 9.23(b)(1).)
- **PSAP personnel costs**, including telecommunicators’ salaries and training. (47 CFR § 9.23(b)(2).)
 - **PSAP administration**, including costs for administration of 911 services and travel expenses associated with providing 911 services. (47 CFR § 9.23(b)(3).)
 - **Integrating public safety/first responder dispatch and 911 systems**, including the lease, purchase, maintenance, and upgrade of CAD hardware and software to support integrated 911 and public safety dispatch operations. (47 CFR § 9.23(b)(4).)
 - **Providing for the interoperability of 911 systems** with one another and with public safety/first responder radio systems. (47 CFR § 9.23(b)(5).)

C. Unacceptable Uses of 911 Fees (47 CFR § 9.23(c))

The rules provide a non-exhaustive list of examples of purposes and functions that are not acceptable for the obligation or expenditure of 911 fees or charges. (47 CFR § 9.23(c).) Examples of unacceptable purposes and functions include, but are not limited to:

- The transfer of 911 fees into a state or other jurisdiction’s general fund or other fund for non-911 purposes. (47 CFR § 9.23(c)(1).)
- Equipment or infrastructure for constructing or expanding non-public safety communications networks, such as commercial cellular networks. (47 CFR § 9.23(c)(2).)
- Equipment or infrastructure for law enforcement, firefighters, and other public safety/first responder entities that does not directly support providing 911 services. (47 CFR § 9.23(c)(3).)

D. Voluntary Safe Harbor for Multi-Purpose Fees (47 CFR § 9.23(d))

Some states or taxing jurisdictions may wish to collect fees or charges designated for “public safety,” “emergency services,” or similar purposes and use a portion of those fees or charges for the support or implementation of 911 services. The rules provide a “safe harbor” under which the obligation or expenditure of such a multi-purpose fee or charge will not constitute diversion, if the state or taxing jurisdiction:

- Specifies the amount or percentage of such fees or charges that is dedicated to 911 services (47 CFR § 9.23(d)(1),
- Ensures that the 911 portion of such fees or charges is segregated and not commingled with any other funds (47 CFR § 9.23(d)(2), and
- Obligates or expends the 911 portion of such fees or charges for acceptable purposes and functions as defined under the Commission’s rules (47 CFR § 9.23(d)(3)).

States and taxing jurisdictions are not required to use the safe harbor provision of the rules. A state or taxing jurisdiction may create an alternative multi-purpose fee mechanism that does not meet the safe

harbor requirements. If it does so, however, the burden will be on the state or taxing jurisdiction to demonstrate that it is not diverting 911 funds.

E. Petition for Determination Process for Additional Acceptable Uses (47 CFR § 9.24)

States and taxing jurisdictions may petition the Commission for a determination that an obligation or expenditure of 911 fees or charges for a purpose or function other than the purposes or functions designated as acceptable in section 9.23 of the Commission's rules should be treated as an acceptable purpose or function. (47 CFR § 9.24(a).)

- A petition must meet the requirements applicable to a petition for declaratory ruling under section 1.2 of the Commission's rules. (47 CFR §§ 1.2, 9.24(a).)
- The Commission shall grant the petition if the state or taxing jurisdiction provides sufficient documentation to demonstrate that the purpose or function:
 - (1) Supports PSAP functions or operations; or
 - (2) Has a direct impact on the ability of a PSAP to receive or respond to 911 calls or to dispatch emergency responders. (47 CFR § 9.24(b)(1)-(2).)

F. Participation Requirement for the Annual 911 Fee Report (47 CFR § 9.25)

A state or taxing jurisdiction that receives a grant under section 158 of the National Telecommunication and Information Administration Organization Act (47 U.S.C. § 942) after December 27, 2020 shall provide the information that the Commission requests to prepare its annual 911 fee report to Congress. (47 CFR § 9.25(a).)

- Each state or taxing jurisdiction receiving such a grant must file the information requested by the Commission and in the form specified by the Public Safety and Homeland Security Bureau. (47 CFR § 9.25(b).)
- Compliance with the annual fee report data collection will not be required until the Office of Management and Budget (OMB) has approved the modified information collection requirement in the *Report and Order*. (47 CFR § 9.25(c).)

G. Diverting Entities and Advisory Committee Ineligibility (47 CFR § 9.26)

Any state or taxing jurisdiction identified in the annual 911 fee report to Congress as engaging in diversion of 911 fees shall be ineligible to participate or send a representative to serve on any advisory committee established by the Commission. (47 CFR § 9.26.)

- Advisory committees established by the Commission include any advisory committee established under the Federal Advisory Committee Act and any other panel that serves an advisory function to the Commission as reflected on the Commission's website.
- Only employees of a diverting jurisdiction (i.e., state or other taxing jurisdiction) who are acting as official representatives of that jurisdiction will be ineligible to participate on advisory committees established by the Commission. This prohibition does not extend to representatives of non-diverting localities that are located within diverting states.
- An individual who is employed by a diverting jurisdiction may still serve on a Commission advisory committee as a representative of a public safety organization or other outside association.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The requirements adopted by the Commission in the *Report and Order* create new and revised reporting and recordkeeping requirements. Pursuant to directives in the *Report and Order*, the Bureau will modify the existing annual fee report questionnaire to obtain additional information from states on the underfunding of 911 systems, including both (1) information on the impact of fee diversion on 911 underfunding and (2) information on 911 underfunding in general to facilitate the Commission's preparation of the annual 911 fee report to Congress. These modifications will also include revision of the annual fee report questionnaire to seek information on whether states and other jurisdictions are using 911 fees or charges solely for purposes and functions deemed acceptable under the new rules. Further, as part of the Petition for Determination process adopted in the *Report and Order* to resolve questions of what are and are not acceptable 911 expenditures, a petitioning state or taxing jurisdiction is required to provide information to make the requisite showing to support the proposed 911 expenditure for which it seeks a determination.

In addition, states or taxing jurisdictions receiving a grant under section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. § 942) after December 27, 2020 must provide the information requested by the Commission to prepare the report required under section 6(f)(2) of the Wireless Communications and Public Safety Act of 1999, as amended (47 U.S.C. § 615a-1(f)(2)). Each state or taxing jurisdiction to which this applies must file the information requested by the Commission in the form specified by the Public Safety and Homeland Security Bureau. More details of the reporting and recordkeeping requirements adopted in the *Report and Order* can be found in Section II of this guide under the Compliance Requirements.

IV. IMPLEMENTATION DATE

The rules in the *Report and Order* become effective on October 18, 2021, 60 days after publication in the Federal Register. However, compliance with the section 9.25(b) reporting requirement will not be required until after approval by OMB. The Commission will publish a document in the Federal Register announcing OMB approval.

V. INTERNET LINKS

A copy of the *Report and Order* is available at: <https://www.fcc.gov/document/fcc-adopts-order-address-911-fee-diversion>.

A copy of the Federal Register Summary of the *911 Fee Diversion Report and Order* is available at: <https://www.govinfo.gov/content/pkg/FR-2021-08-17/pdf/2021-16068.pdf>.

A copy of the Commission's 911 fee diversion rules (47 CFR § 9.21 *et seq.*) is available at: <https://www.ecfr.gov/cgi-bin/text-idx?SID=06ab7b305d5143796082f5da7e6acffd&mc=true&node=20210817y1.14>.

A copy of section 902 is available at: <https://uscode.house.gov/statviewer.htm?volume=134&page=3206#>.

A copy of the relevant portion of the U.S. Code (47 U.S.C. § 615a-1, as amended by section 902) is available at: [https://uscode.house.gov/view.xhtml?req=\(title:47%20section:615a-1%20edition:prelim\)%20OR%20\(granuleid:USC-prelim-title47-section615a-1\)&f=treesort&edition=prelim&num=0&jumpTo=true](https://uscode.house.gov/view.xhtml?req=(title:47%20section:615a-1%20edition:prelim)%20OR%20(granuleid:USC-prelim-title47-section615a-1)&f=treesort&edition=prelim&num=0&jumpTo=true).

The Commission's webpage on the annual 911 fee reports to Congress is available at: <https://www.fcc.gov/general/911-fee-reports>.